

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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OPERATING ENGINEERS LOCAL 139 HEALTH BENEFIT FUND;  
CENTRAL PENSION FUND OF THE INTERNATIONAL UNION OF  
OPERATING ENGINEERS AND PARTICIPATING EMPLOYERS;  
WISCONSIN OPERATING ENGINEERS SKILL IMPROVEMENT  
AND APPRENTICESHIP FUND;  
JOINT LABOR MANAGEMENT WORK PRESERVATION FUND;  
TERRANCE E. MCGOWAN; and  
INTERNATIONAL UNION OF OPERATING ENGINEERS  
LOCAL 139 AFL-CIO,

Plaintiffs,

v.

Case No. 08-CV-597

HAWK CONSTRUCTION, LLC,

Defendant.

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**ORDER**

On July 11, 2008, plaintiffs filed a complaint against Hawk Construction, LLC, ("Hawk") alleging Hawk failed to make timely contributions to plaintiffs on behalf of its employees covered by a collective bargaining agreement. A summons was returned executed by plaintiffs on August 4, 2008. According to the summons, defendant was served on July 29, 2008. As such, Hawk's responsive pleading was due on August 18, 2008. However, Hawk has not filed a pleading responsive to the complaint, and no other pleading has been filed by either party.

Pursuant to Civil Local Rule 41.2, in all cases in which a defendant has failed to file an answer or otherwise defend within six months from the filing of the complaint and the plaintiff has not moved for a default judgment, the court may, on its own motion, after 20 days' notice to the attorney of record for the plaintiff, enter

an order dismissing the action for lack of prosecution. See Civil L.R. 41.2. Given that over six months have passed since plaintiffs filed their complaint, Hawk has not filed a pleading responsive to the complaint, and plaintiffs have not moved for a default judgment, the court concludes that plaintiffs are not diligently prosecuting this action. Accordingly, the court grants plaintiffs 20 days to file a motion for default judgment.

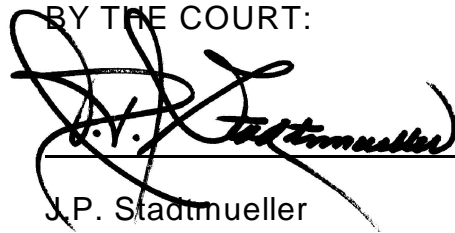
If Hawk does not file a pleading responsive to plaintiffs' complaint, and plaintiffs fail to file a motion for default judgment within 20 days from the date of this order, the court will dismiss this action without prejudice pursuant to Civil Local Rule 41.2. Pursuant to that rule, any affected party can petition for reinstatement of this action within 20 days from the date of the dismissal.

Accordingly,

**IT IS ORDERED** that plaintiffs shall have twenty (20) days from the date of this order to move for default judgment if no responsive pleading is filed by defendant; if no responsive pleading is filed by defendant and plaintiffs fail to file a motion for default judgment within twenty (20) days of the date of this order, the court will dismiss this action without prejudice.

Dated at Milwaukee, Wisconsin, this 10th day of February, 2009.

BY THE COURT:



J.P. Stadtmueller  
U.S. District Judge